**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 6436 of 2006**
**To**
**SPECIAL CIVIL APPLICATION No. 6567 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE D.H.WAGHELA**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**ASHOKBHAI H DHANA - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 3 - Respondent(s)**

==========

**Appearance :**
Mr Ramnandan Singh with MS ABHA B MAKWANA for Petitioner(s) : 1,
Mr K P Rawal, Asstt.GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

==========

**CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**
**Date : 05/04/2006**

**ORAL (COMMON) JUDGMENT**

The petitioners, numbering 132, have filed these petitions as employees of the respondent no.3 i.e. Gondal Nagar Palika with the prayers to strike down condition no.4 incorporated in the Government Resolution dated

2.6.1998 and to set aside the order dated 3.12.2005 whereby the representation to allow the benefit of the 5th Pay Commission, was rejected.

**2.** Learned counsel Mr Ramnandan Singh submitted that the first prayer regarding striking down the condition in Government Resolution dated 2.6.1998 was not pressed. As a result thereof, undisputably, the condition to keep the establishment expenditure below 45% for the purpose of getting grant for revised pay-scales operates against the respondent no.3 and the employees thereof. It could not be gainsaid that an earlier petition for agitating the same issue by way of Special Civil Application No.10062 of 2002, was rejected by order dated 13.8.2003 with the observation that it was not possible for the Court to hold that the revenue and establishment expenditure of the Municipality had not been properly worked out. The same Union representing the present petitioners, had filed another Special Civil Application being Special Civil Application No.13414 of 2005 and withdrawn it on 8.7.2005 with a view to making a representation. The impugned order dated 3.12.2005 appears to have been made after considering the representation and in compliance with the aforesaid order

dated 8.7.2005. The impugned order referred to the direction of this Court not to continue the benefit of 5th Pay Commission in the Municipalities when the establishment expenditure was exceeding 45%. While deciding the issue of implementation of the 5th Pay Commission, the Director of Municipalities appears to have not only considered the representation made pursuant to the order of this Court but called for additional information and after perusing the same, arrived at the finding that the establishment expenditure of the respondent municipality in 2002-03 was 73.84% and 65.90% and 75.47% in the years 2003-04 and 2004-05 respectively. In the subsequent months – April, 2005 to October, 2005- the monthly percentage of establishment expenses was 58% at the minimum and 99.27% at the maximum. Therefore, the proposal and the representation for adoption of the 5th Pay Commission is rejected and the municipality is instructed to approach with a proposal as and when the establishment expenditure goes below 45%.

**3.** Assailing the above order, learned counsel Mr Singh submitted, without support of any material or document, that the correct figures of income and expenditure were not submitted before respondent no.2 and

the proper figure of establishment expenses could be far below 45%. Referring to the letter dated 16.12.1999 of the Collector, Rajkot, which is annexed at Annexure 'J' to the petition, the learned counsel submitted that many more persons were appointed without there being vacancies on the regular set-up of the municipality. He submitted that the such appointees were continued in service despite instructions from the office of the Collector. It was on account of such illegal and excessive appointments that the establishment expenses were not brought down and the remaining staff on the regular service had to suffer. He, therefore, submitted that such expenditure on the staff in excess of the requirement or set up of the municipality ought to be ignored in calculating the percentage of establishment expenses. It was fairly conceded that whether the aforesaid excess staff was legally absorbed or discharged or required to be discharged was not the subject matter of this petition and such appointments were not called into question by the petitioner in any forum.

**4**. In the above facts, since the Government Resolution dated 2.6.1998 is clear about the limit on establishment expenses and the allegation of the establishment

expenses being less than the permissible limit is not substantiated by any material or evidence worth the name, the respondent cannot be directed even to reconsider the case of the petitioners or the representation of the respondent no.3. Under the circumstances, the petitions are dismissed as having no substance.

**[D H Waghela, J.]**

*msp*